# Water and Water Courses

**presented by**

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1. Corporeals are things that have a body, whether animate or inanimate, and can be felt or touched. Incorporeals are things that have no body, but are comprehended by the understanding, such as the rights of inheritance, servitudes, obligations, and right of intellectual property. *LA C.C. Art. 461*

### C. Movable and Immovable Things

1. Movables

a. Corporeal Movables

1) Corporeal movables are things, whether animate or inanimate, that normally move or can be moved from one place to another. *LA C.C. Art. 471*

b. Incorporeal Movables

1) Rights, obligations, and actions that apply to a movable thing are incorporeal movables. Movables of this kind are such as bonds, annuities, and interests or shares in entities possessing juridical personality.

Interests or shares in a juridical person that owns immovables are considered as movables as long as the entity exists; upon its dissolution, the right of each individual to a share in the immovables is an immovable. *LA C.C. Art. 473*

2. Immovables

a. Corporeal Immovables

1) Tracts of land with their component parts, are immovables. *LA C.C. Art. 462*

a) Buildings, other constructions permanently attached to the ground, standing timber, and unharvested crops or ungathered fruits of trees, are component parts of a tract of land when they belong to the owner of the ground. *LA C.C. Art. 463*

b. Incorporeal Immovables

1) Rights and actions that apply to immovable things are incorporeal immovables. Immovables of this kind are such as personal servitudes established on immovables, predial servitudes, mineral rights, and petitory or possessory actions. *LA C.C. Art. 470*

## D. Common, Public, and Private Things

1. Common Things

Common things may not be owned by anyone. They are such as the air and the high seas that may be freely used by everyone comfortably with the use for which nature has intended them. *LA C.C. Art. 449*

2. Public Things

a. Public things are owned by the state or its political subdivisions in their capacity as public persons.

Public things that belong to the state are such as running waters, the waters and bottoms of natural navigable water bodies, the territorial sea, and the seashore.

Public things that may belong to political subdivisions of the state are such as streets and public squares. *LA C.C. Art. 450*

b. Seashore is the space of land over which the water of the sea spread in the highest tide during the winter season. *LA C.C. Art. 451*

3. Private Things

a. Private things are owned by individuals, other private persons, and by the state or its political subdivisions in their capacity as private persons. *LA C.C. Art. 453*

4. Public Use

a. Public things and common things are subject to public use in accordance with applicable laws and regulations. Everyone has the right to fish in the rivers, ports, roadsteads, and harbors, and the right to land on the seashore, to fish, to shelter himself, to moor ships, to dry nets, and the like, provided that he does not cause injury to the property of adjoining owners.

The seashore within the limits of a municipality is subject to its police power, and the public use is governed by municipal ordinances and regulations. *LA C.C. Art. 452*

b. Private things may be subject to public use in accordance with law or by dedication. *LA C.C. Art. 455*

1) The banks of navigable rivers or streams are private things that are subject to public use.

The bank of a navigable river or stream is the land lying between the ordinary low and the ordinary high stage of the water. Nevertheless, when there is a levee in proximity to the water, established according to law, the levee shall form the bank. *LA C.C. Art. 456*

# BOUNDARIES

## A. DEFINITION

### 1. Definition of Boundary

A boundary is the line of separation between contiguous lands. A boundary marker is a natural of artificial object that marks on the ground the line of separation of contiguous lands. *C.C. Art. 784*

a. A boundary need not be a fence or other enclosure but may be evidenced by markings commonly used by surveyors. *Watson v. Crown Zellerbach Corp. (1960), 124 So. 2d 138*

b. By boundary is understood, in general, every separation, natural or artificial, which marks the confines or line of division of two contiguous estates; trees or hedges may be planted, ditches may be dug, walls or enclosures may be erected, to serve as boundaries. *Aubrey v. Deggs, App. 1936, 165 So. 719.*

1) The word "enclosures" means that the land actually, physically, and corporeally possessed by one as owner must be established with certainty by natural or artificial marks sufficient to give definite notice to public or character and extent of possession, to identify fully the property possessed and fix with certainty the boundaries or limits thereof. *Sattler v. Pellichino, App.1 Cir.1954, 71 So.2d 689.*

## B. FIXING BOUNDARIES

### 1. Fixing of Boundary

The fixing of the boundary may involve determination of the line of separation between contiguous lands, if it is uncertain or disputed; it may also involve the placement of markers on the ground, if markers were never placed, or are no longer to be seen. *C.C. Art. 785*

a. "Boundary action" is action brought by the owner or possessor of one or more contiguous tracts of land, to compel fixing of boundary between such tracts of land. *Fontenot v. Chapman. App. 3 Cir. 1979, 377 So. 2d 492.*

1) The owner, possessor, unsufructuary, or lessee may compel the fixing of the boundary. *C.C. 786 and C.C. 787*

2) The right to compel the fixing of a boundary is imprescriptable. *C.C. Art. 788*

b. An action of boundary lies only where adjoining estates have never been separated physically, where the two estates have been separated but physical boundaries are no longer visible, or where the bounds exist but have been placed incorrectly. *Branch v. Hinson, App. 1966, 183 So.2d 655; Travis v. Bridges, App. 1959, 110 So.2d 855; Sessum v. Hemperly, 1957, 233 La. 444, 96 So.2d 832; Kobler v. Koch, App. 1942, 6 So.2d 55.*

**2. Location of Boundary without "Fixing"**

a. When markers are placed by one of the contiguous owners alone, or by two contiguous owners without a written agreement, the boundary is not fixed. A demand for a judicial or extrajudicial fixing of the boundary may, therefore, be proper. If one of the contiguous owners has possessed, however, within visible bounds without interruption for thirty years, the boundary shall be fixed according to lines established by prescription.

1) Early Louisiana law (former Civil Code Article 838) forbid a landowner to mark his boundary without notice to the neighbor to be present; it also provided that the operation had no effect in the absence of notice and the contiguous neighbor may have an action for damages that he may have sustained. As a result of the suppression of this article, a landowner may freely mark his boundary; but there should be no doubt that such a marking does not constitute an extrajudicial fixing of the boundary. Moreover, there should be no doubt that the placement of boundary markers by a landowner may constitute a disturbance of possession under Article 3455 of the Civil Code or a wrongful act under Article 2315.

2) The law does not permit the fixing of boundaries by an oral agreement except as between the parties themselves. *Prather v. Valien, App. 3 Cir 1976, 327 So.2d 130,* writ denied *330 So.2d 318.*

b. The more passive failure of a contiguous owner to object to the location of a fence or other marker, or the informal acquiescence by the contiguous owners to a jointly erected fence, does not constitute a fixing of the boundary.

1) An action for the correction of the boundary may be brought more than ten years after the location of boundary markers. There is no ten year liberative prescription running because the acquiescence in the location of the bounds does not constitute a contract. *Pan American Prod. Co. v. Robichaux, 200 La. 666, 8 So.2d 635 (1942).*

3. **The boundary may be fixed judicially or extrajudicially.** *C.C. Art. 789*

a. **Extrajudicially**

The boundary is fixed extrajudicially when the parties, by written agreement, determine the line of separation between their lands with or without reference to markers on the ground. *C.C. Art. 789*

1) Owners of contiguous lands may enter into a written agreement designating the boundary between their lands with reference to markers on the ground. They may utilize fences, natural monuments, or other boundary markers.

a) An agreement between adjoining landowners on the correct location of the boundary between properties is the only kind of agreement that may dispense with the requirement that a judgement fixing the boundary between contiguous tracts must be preceded by establishment of the boundary line by

a land surveyor or licensed civil engineer appointed by the court. *Bollin v. Stafford, App. 1 Cir. 1974, 297 So.2d 711.*

b) Where the boundary sought to be reestablished was fixed by an agreement of the owners of adjoining estates but was not predicated on a survey, the action to establish boundary was imprescriptible. *Duplantis v. Cehan, App.1 Cir. 1962, 140 So.2d 409*

2) An error in the survey conducted before the boundary agreement is the error of the parties and the error must be rectified before 10 year liberative prescription has run.

a) Thus, owners of contiguous lands may determine the line of separation on paper and then proceed to have it marked on the ground; or they mark the boundary on the ground and then determine the line of separation with reference to the markers. In either case, the agreement is an act translative of ownership and has the effect of a compromise. Ownership is conveyed, respectively, up to the line fixed by the agreement. If the parties or the surveyor committed an error in the location of the line of separation, or the markers, or both, the error may be rectified by the court unless the agreement is no longer assailable as a result of the ten year liberative prescription.

b. **Judicially Fixed by Court**

The court shall fix the boundary according to the ownership of the parties; if neither party proves ownership, the boundary shall be fixed according to limits established by possession. *C.C. Art. 792*

1) When both parties rely on titles only, the boundary shall be fixed according to titles. When the parties trace their titles to a common author, preference shall be given to the more ancient title. *C.C. Art. 793*

a) Trial court properly gave preference to plaintiff's title in resolving boundary dispute where plaintiff's title was more ancient, deriving from a 1952 sale whereas defendant's title was derived from a 1962 sale from the common grantor. *Williamson v. Kelly, App. 3 Cir. 1987, 520 So.2d 868,* writ denied *522 So.2d 562.*

2) When a party proves acquisitive prescription, the boundary shall be fixed according to limits established by prescription rather than titles. If a party and his ancestors in title possessed for thirty years without interruption, within visible bounds, more land than their title called for, the boundary shall be fixed along these bounds. *C.C. Art. 794*

a) 10 year acquisitive prescription

b) 30 year acquisitive prescription

c) Where there is a visible boundary and there has been actual uninterrupted possession, either in person or through ancestors in title, for 30 years or more of the land extending beyond that described in the title and embraced within

the visible bounds, then the party who possesses acquires the right to the land beyond his title. *Williams v. Peacock, App. 3 Cir. 1983, 441 So.2d 57.*

(1) Visible bounds sometimes referred to as "enclosures," mean that the land is actually, physically marked by natural or artificial means sufficient to give definite notice of the extent of possession. *Sottler v. Pellichine, 71 So.2d 689 (1954).*

(2) The burden of proof for visible bounds is the same as for 30-year acquisitive prescription. *Briggs v. Pellerin, 428 So.2d 1087*

3) Error in a survey conducted for the court becomes res judicata to the parties and cannot be attacked. *Opdenwyer v. Brown, 99 So. 482 (1924).*

c. **Costs**

1) When the boundary is fixed extrajudicially costs are divided equally between the adjoining owners in the absence of contrary agreement. When the boundary is fixed judicially court costs are taxed in accordance with the rules of the Code of Civil Procedure. Expenses of litigation not taxed as court costs are borne by the person who has incurred them. *C.C. Art. 790*

a) General rule is that fixing of a boundary is of benefit to both parties to the action and, hence, costs should be shared. *Fontenot v. Marks. App.3 Cir.1983, 430 So.2d 810*

b) Where only one group of litigants provoked the necessity for a survey to determine ideal boundary between owners and show relationship of old fence to that boundary, expenses of the survey should be borne by those litigants. *Brookshire v. Guidry, App. 3 Cir.1978, 355 So.2d 559.*

c) Costs incurred in boundary suit are divided equally, where there is no proof of demand on one side and refusal on other to settle dispute amicably. *Fairbanks v. Louisiana Central Lumber Co., App.1935, 163 So. 209; May v. Cuthbert, 1929, 14 La.App.604, 122 So. 130; Gaubert v. Gaubert, 1925, 1 La.App. 719; Tircuit v. Pelanne, 1859, 14 La.Ann.215.*

(1) Entire cost of surveyor's fees and expenses for field notes and of chainmen was chargeable to defendants as parties cast in boundary case, where evidence showed that suit became necessary when defendants refused to join plaintiff in having survey made after plaintiff had made boundary concessions. *Deshotels v. Guillory, App.1935, 161 So. 217,* rehearing refused *162 So. 652.*

d. **Removal of Monuments**

1) When the boundary has been marked judicially or extrajudicially, one who removes boundary markers without court authority is liable for damages. He may also be compelled to restore the markers to their previous location. *C.C. Art. 791*

2) If defendant pulls up the stakes fixed by the surveyor, and attempt to obliterate the marks of the same, he may be enjoined, and the injunction cannot be released on bond. To permit defendant to destroy a survey made by order of a court of competent jurisdiction, would make a farce of legal process, and effectually obstruct the course of justice. *Stockner v. Sparrow, App., Gunby's Dec. (2d Dir. 1855) 42.*

**THE LOUISIANA LAW**
**OF**
**NAVIGABLE AND NON-NAVIGABLE WATERS**

A. **Non-Navigable Waters and Waterbottoms**

1. **Ownership of inland non-navigable waterbottoms**

a. Inland non-navigable water bodies are those which are not navigable in fact and are not sea, arms of the sea, or seashore.

b. Inland non-navigable water beds or bottoms are private things and may be owned by private persons or by the state and its political subdivisions in their capacity as private person. *L.R.S. 9:1115.2 (1992)*

B. **Navigable Waters and Waterbottoms**

1. **Legal Doctrines**

**a. Inherent Sovereignty**

1) When the (American) Revolution occurred, each state became sovereign and acquired the ownership of navigable waters in the state and the soils under them. Martin v. Waddell's Lessee, 41 U.S. 367, 16 Peters 367, 10 L.Ed. 997 (1842).

2) The inherent sovereignty of all states dictates that the State and its citizens own the beds and bottoms of all navigable waterways in existence on the date of statehood. *State v. Placid Oil Co., 300 So. 2d at 173.*

3) By virtue of its inherent sovereignty, the State acquired from the Federal Government the beds and bottoms of all navigable water bottoms in the state, whether lakes, rivers or other streams, up to the ordinary high water mark, upon the State's admission to the Union in 1812. Shively v. Bowlby, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed . 331; State v. Richardson, 140 La. 329, 72 So. 984.

**b. Equal Footing Doctrine**

1) New states are admitted to the Union on an equal footing with the original thirteen. Pollard et al. v. Hagan et al., 44 U.S. 212, 3 How. 212, 11 L.Ed. 565 (1845).

2) The State of Louisiana in 1812 acquired title to all lands within its boundaries below the ordinary high water mark of navigable bodies of water by virtue of the Equal Footing Doctrine – i.e. the inherent sovereignty of all states dictates that the State and its citizens own the beds and bottoms of all navigable waterways in existence on the date of statehood. *State v. Placid Oil Co, supra*

**c. Public Trust Doctrine**

1) States, upon entering the Union, were given ownership over all lands beneath waters subject to the tide's influence… that the lands… became property of the state upon its admission to the union." *Phillips Petroleum Co. v. Mississippi 108 S. Ct. 791 (1988)*

2. **Navigable Waterbottoms cannot be alienated by the state.**

The Legislature shall neither alienate nor authorize the alienation of the bed of a navigable water body, except for purposes of reclamation by the riparian owner to recover land lost through erosion. This Section shall not prevent the leasing of state lands or water bottoms for mineral or other purposes. Except as provided in this Section, the bed of a navigable water body may be reclaimed only for public use. (*Article IX, Section 3 of the Constitution of La. 1974).*

a. Historical: Nor shall the Legislature alienate, or authorize the alienation of the fee of the bed of any navigable stream, lake or other body of water, except for purposes of reclamation. *Article 4, Section 2 of the 1921 Constitution*

3. **Natural Navigable Waterbottoms are "Public things."**

Public things are owned by the state and its political subdivision in their capacity as public persons.

Public things that belong to the state are such as running waters, the waters and bottoms of natural navigable water bodies, the territorial sea, and the seashore.

Public things that may belong to political subdivisions of the state are such as streets and public squares. *C.C. Art 450*

4. **Ownership of Waters and Beds, Historical Developments**

a. **Public Policy Against Private Ownership**

Evidence of the strong public policy against private ownership of navigable water bodies embodied in the Civil code articles is found in a series of legislative enactments, recognizing explicitly or implicitly that such property is owned by the State as inalienable public things.

1) The first enactment of this type was *Act No. 247 of 1855*, which recognized that if any of the lands acquired through Acts of Congress of 1849 and 1850 contained navigable waters, the land under these waters would not be subject to sale along with swamp and overflow land that were to be sold.

2) Next, *Act No. 124 of 1862* recognized that the bottoms of navigable lakes were insusceptible of private ownership by providing that once natural causes rendered dry the beds of navigable lakes, they became "swamp lands" and were susceptible of alienation.

a) One authority has noted that these two statutes reveal that the legislature in 1855 and 1862 was keenly aware of the prior existence of the public policy of the State that the beds of navigable water bodies are inalienable and insusceptible of private ownership. *J. Madden Federal and State Lands in Louisiana 331 (1973).*

3) Thirdly, *Act No. 75 of 1880,* the legislature did not enunciate as specific a recognition of public policy as it had in the two previous statues, but it did exercise extreme caution in providing that the lands it authorized to be sold were only those received by the State under the Swamp Land Acts of 1849 and 1850. This specific restriction evidences an intent to make certain that inalienable water beds were excluded, in recognition of the public policy emanating from the Civil Code. *See Madden, at 331.*

b. **The Oyster Statutes**

The Oyster Statutes were passed by the legislature over the next 50 years. Each of the following enactments provided that the beds of certain navigable waterways near the Gulf of Mexico shall be, and will continue to be the property of the State of Louisiana.

1) Act No. 106 of 1886
2) Act No. 110 of 1892
3) Act No. 121 of 1896
4) Act No. 153 of 1902
5) Act No. 52 of 1904
6) Act No. 189 of 1910
7) Act No. 54 of 1914
8) Act No. 139 of 1924
9) Act No. 67 of 1932

c. **Act 258 of 1910**

The waters of and in all bayous, river, streams, lagoons, lakes, and bays and the beds thereof, not under the direct ownership of any person on August 12, 1910, are declared to be the property of the state. There shall never be any charge assessed any person for the use of the waters of the state for municipal, industrial, agricultural or domestic purposes.

While acknowledging the absolute supremacy of the United States of America over the navigation on the navigable waters within the borders of the state, it is hereby declared that the ownership of the water itself and the beds thereof in the said navigable waters is vested in the state and that the state has the right to enter into possession of these waters when not interfering with the control of navigation exercised thereon by the United States of America. This Section shall not affect the acquisition of property by alluvion or accretion.

All transfers and conveyances or purported transfers and conveyances made by the State of Louisiana to any levee district of the state of any navigable waters and the beds and bottoms thereof are hereby rescinded, revoked and cancelled.

This Section is not intended to interfere with the acquisition in good faith of any waters or the beds thereof transferred by the state or its agencies prior to August 12, 1910. As amended *Acts 1954, No. 443, Section 1. (R.S. 9:1101)*

1) Act No. 258 of 1910 affirmed that the right to ownership of the beds of all navigable streams is vested in the State. *Gulf Oil Co. v. State Mineral Board, 317 So2 576 (1974)*

2) The water bottom of a navigable lake or arm of the sea is reserved by the language of the patent and is, moreover, nontransferable. *Gulf Oil Corp. v. State Mineral Bd., 317 So.2d 576 (1974); Gaudet v. City of Kenner, 487 So. 2d 446, 448 (La. App.5 Cir. 1986).*

d. **Act 62 of 1912 – Statute of Repose**

Actions, including those by the State of Louisiana to annual any patent issued by the state, duly signed by the governor and the register of the state land office, and of record in the state land office, are prescribed in six years, reckoning from the day of the issuance of the patent. (*L.R.S. 9:5661)*

1) Act No. 62 is not a ratification of conveyances of navigable water bottoms because, "…statutes should be interpreted in light of the State's public policy". *Gulf Oil Corp. v. State Mineral Board, et al (317 So2 576) 1974*

e. **Article 4, Section 2 of the 1921 Constitution**

Nor shall the Legislature alienate, or authorize the alienation of the fee of the bed of any navigable stream, lake or other body of water, except for purposes of reclamation. In all cases the mineral rights on any and all property sold by the State shall be reserved, except where the owner or other person having the right to redeem may buy or redeem property sold or adjudicated to the State for taxes.

f. **California Co. v. Price 74 So. 2d 1 La. (1953)**

In 1953 the Louisiana Supreme Court rendered a decision that created immediate controversy. The case was California Co. v. Price and may be summarized as follows:

The Price case was brought as a concurses proceeding to determine the ownership of funds representing accumulated oil royalties from wells drilled in Grand Bay, which was an arm of the sea Both the state of Louisiana and the heirs and successors of the individual who had received a patent from the state, claimed the funds. The patent was executed by the state to the ancestor in title of the heirs in 1874. It included a portion of Grand Bay, a navigable bay that was an arm of the sea. It was regular on its face, properly recorded, and supported by consideration.

The Supreme Court ruled that the state had transferred ownership of a portion of Grand Bay to the patentee. The patent was tacitly confirmed and rendered unassailable by inaction of the state pursuant to the provisions of Act 62 of 1912. It held that the Legislature, prior to adoption of the Constitution of 1921, had the

right to sanction, the conveyance of submerged lands, notwithstanding any codal concept of public policy to the contrary since there was no constitutional restraint on the power of the Legislature to dispose of navigable waterbottoms of the state prior to the adoption of the Constitution of 1921 and the six year prescriptive period had run, the state was stopped from attacking the validity of the patient.

g. **Public Policy that Navigable Waters and the Beds Thereof Are Public Things**

1) The implications of this decision could have had a disastrous impact on oil and gas revenues for the state of Louisiana. Accordingly the legislature in 1954 passed Act 727 which legislatively attempted to overturn the Price case. The eventual impact was an overruling of the Price decision in 1974 by the Gulf Oil Corporation case.

2) It has been the public policy of the State of Louisiana at all times since its admission into the Union that all navigable waters and the beds of same within its boundaries are common or public things and insusceptible of private ownership; that no act of the Legislature of Louisiana has been enacted in contravention of said policy, and that the intent of the Legislature of this state at the time of the enactment of Act No. 62 of the year 1912 now appearing as R.S. 9:5661, and continuously thereafter was and is at this present time to ratify and confirm only those patents which conveyed or purported to convey public lands susceptible of private ownership of the nature and character, the alienation or transfer of which was authorized by law but not patents or transfers which proposed to convey or transfer navigable waters and the beds of same. (*L.R.S. 9:1107) (Formerly Act 727 of 1954)*

a) See the 1937 case *Miami Corporation v. State, 186 La. 784, 812, 173 So. 315, 324,),* the Supreme Court noted that private ownership of the beds of navigable waters is forbidden by and "…contrary to the whole spirit of the Code … It then held that"…[i]t is the rule of property and of title in this State, and also a rule of public policy that the State, as a sovereignty, holds title to the beds of navigable bodies of water."

b) "[I]f something is public it cannot be alienated or appropriated for private use." *Lake Terrac Prop. Owners v. New Orleans, 556 So.2d 111,116 (La.App. 4 Cir. 1990)*

3) **Patents transferring navigable waters are null and void.**

Any patent or transfer heretofore or hereafter issued or made is null and void, so far as same purports to include such navigable waters and the beds thereof, as having been issued or made in contravention of the public policy of this state and without prior authorization by law; provided that the provisions of this Section shall not affect the laws of accretion or apply to lands that were susceptible to private ownership on the date of the patent or transfer by the state or a state agency. *L.R.S. 9:1108 (1954)*

a) Patents conveying state property to private individuals are ineffective insofar as they purport to alienate the beds of navigable waters, and that Act No. 62

of 1912 did not have the effect of ratifying such absolutely null transfer. *Gulf Oil Corp. v. State Mineral Board, et al – 317 So2 576 (1974)*

b) But see *the 1984 case, Terrebonne v. South Lafourche Tidal Council, 445 So.2d 1221* "Even interpretive legislation cannot operate to disturb already vested rights. The Legislature cannot retroactively affect, under the guise of interpretive legislation, substantive rights vested under earlier unambiguous legislation."

4) There is no prescription to cure patents conveying navigable waters. No statute enacted by the legislature of Louisiana shall be construed to validate by reason of prescription or preemption any patent or transfer issued by the state or any levee district thereof, so far as the same purports to include navigable or tide waters or the beds of same. *L.R.S. 9:1109 (1954)*

5. **The Classification and Reclassification of Things**

a. Things are divided into common, public, and private; corporeals and incorporeals; and movables and immovables. *C.C. Art 448*

1) Common things.

Common things may not be owned by anyone. They are such as the air and the high seas that may be freely used by everyone conformably with the use for which nature has intended them. *C.C. Art 449*

2) Public things

Public things are owned by the state and its political subdivision in their capacity as public persons.

Public things that belong to the state are such as running waters, the waters and bottoms of natural navigable water bodies, the territorial sea, and the seashore.

Public things that may belong to political subdivisions of the state are such as streets and public squares. *C.C. Art 450*

3) Private things.

Private things are owned by individuals, other private persons, and by the state or its political subdivisions in their capacity as private persons. *C.C. Art 453*

b. A Public Thing Owned by the State May Become a Private Thing

1) The Civil Code and jurisprudence provides many examples of such reclassification. For example, although the State of Louisiana, in its sovereign capacity, acquired ownership of all natural navigable waterbeds in 1812 to the high water mark, Louisiana through its civil Code has reclassified the (bank) lands situated between the high and low-water marks, in the case of navigable waters, as private things subject to public use. See Civil code Article 456; *State*

*v. Richardson,* 140 La. 329, 72 So. 984 (1916). The Code provisions relating to private ownership of alluvion and dereliction along a navigable river or stream again contemplates a reclassification of such property from "public" to "private." The same is true of the codal scheme governing ownership of land where a navigable river leaves its channel and forms a new bed. See Civil code Article 504.

2) The Louisiana Supreme Court has also recognized that the bed of rivers that were navigable in 1812 but have subsequently become non-navigable can become private things susceptible of alienation by the State. See *Chaney v. State Mineral Board,* 444 So.2d 105 (La. 1983); *Wemple v. Eastham,* 150 La. 247, 90 So. 637 (1922).

c. A Private Thing Owned by the State May Become a Public Thing

1) There is nothing in the Louisiana Civil Code which prohibits reclassification of property of the State from a "private thing" susceptible of alienation by the State to a "public thing" incapable of private ownership.

2) This same legislative reclassification takes place when a formerly non-navigable waterbed within tidal overflow lands acquired by the State becomes navigable in fact prior to divestiture of such lands by the State. The bed of the waterbed, unlike the tidal overflow lands which contain it, becomes a public thing subject to public use and insusceptible of private ownership.

3) There is no sound reason to distinguish between the inalienable character of navigable waterbeds which existed in 1812 and were acquired under the equal footing doctrine and natural navigable waterbeds which, though non-navigable at the time such bottoms were acquired by the State of Louisiana under federal grant or other means of acquisition, become naturally navigable prior to segregation by the State. The public interest which favors retention of ownership of the bed in the State to assure free use of the waters for navigation and transportation is the same in each case. *Vermilion Bay Land Co. v. Phillips Petroleum Co. 646 So.2d 408 La.App. 4 Cir., 1994.*

d. A Private Thing Owned by an Individual May Become a Public Thing

1) In *Miami Corp. v. State,* 186 La. 784, 173 So. 315 (1936), *cert, denied,* 302 U.S. 700, 58 S.Ct. 19, 82 L.Ed. 541 (1937) the court recognized that when private property becomes part of the bed of a navigable lake of the State of Louisiana by natural processes, the submerged area becomes a portion of the bed—a public thing insusceptible of private ownership.

2) When a navigable river or stream abandons its bed and opens a new one, the owners of the land on which the new bed is located shall take by way of indemnification the abandoned bed, each in proportion to the quantity of the land he lost. If the river returns to the old bed, each shall take his former bed. *C.C. Art. 504*

3) If a non-navigable stream becomes navigable, it would cease to be susceptible of private ownership and would become property of the State." See Hargrave,

Statutory and Hortatory Provisions of the Louisiana Constitution of 1974, 43 La. Law Rev. at 660-661 (1983).

4) But note: Professor Yiannopoulos indicates that by application of Article 450 of the Civil Code, a body of water which, though non-navigable in 1812, subsequently becomes navigable by natural forces, is a public thing. While he notes that a divestiture of private ownership by such reclassification would run afoul of constitutional prohibitions against the taking of property without compensation, no such limitation arises when the legislative reclassification occurs prior to segregation of the waterbed by the State; in fact, the navigable status of the waterbed prior to segregation precludes the creation of private ownership in the bed of the water.

6. **The Authority of the Legislature to Settle Boundary Disputes**

a. L.R.S. *9:1110* – Ownership of land adjacent to False River (1975)

The title of the owners of land adjacent to that body of water in Pointe Coupee Parish known as False River shall extend to fifteen feet above mean sea level. The boundary line formed at fifteen feet above mean sea level marks the division between land owned by the state and land owned by private persons along the banks of False River.

1) The State contends that Act 285 of 1975 (i.e. R.S. 9:1110) violates the Louisiana constitution because it is a legislative attempt to fix the boundary of the bottoms; also in that it is in essence a local law which was not introduced as a Local Special Act in accordance with La. Const. of 1974 art. 3 §§12, 13 and thus is not constitutionally valid. *Chevron U.S.A., Inc. v. Lorio, 496 So.2d 611 (1986).*

a) By adoption of Article 455, now at 456, of the Civil Code of 1870, the legislature granted the banks of navigable streams to adjacent owners, defining State ownership of the bottoms of navigable streams and the land that is covered by the water in its ordinary low stage. False River was once a navigable waterway and has been declared so by the Louisiana Supreme Court in Sicard v. Chitz, et al, 13 La. 111 (New Orleans, March 1839); thus the State, under LSA-C.C. art 456, only owns the bed of False River to the ordinary low water mark. Because the record clearly supports a finding that the low stage of False River is considerably below fifteen feet above mean sea level as fixed by LSA-R.S. 9:1110, the State actually has acquired property under this statute. Act 285 of 1975 (LSA-R.S.9:1110) does not alienate any mineral or property rights of the State, hence it is not violative of Article 9 § 4(A) of the Louisiana Constitution of 1974. *Chevron U.S.A., Inc. v. Lorio, 496 So.2d 611 (1986).*

b) LSA-R.S. 9:1110 is not a local or special law for several reasons. There is no evidence that LSA-R.S. 9:1110 was enacted to secure an advantage in favor of any private individual or group of individuals, and it applies to all persons possessing characteristics of the affected class, i.e. all persons owning land adjacent to False River. In settling this matter in LSA-R.S. 9:1110, the Legislature was acting under its general authority to prescribe the procedure of settling disputes between the State and its citizens. *Chevron U.S.A., Inc. v. Lorio, 496 Sp/2d 611 (1986).*

7. **Rivers or Streams**

a. **Navigable Rivers or Streams**

1) It is not necessary that water continuously flow in order for a water course to be a river or a stream. *Esso Standard Oil Co. v. Jones, 98 So. 2d 250, 233 La. 954*

2) If a non-navigable stream becomes navigable, it would cease to be susceptible of private ownership and would become property of the State." See Hargrave, Statutory and Hortatory Provisions of the Louisiana Constitution of 1974, 43 La. Law Rev. at 660-661 (1983).

3) The banks of navigable rivers or streams are private things that are subject to public use. The banks of a navigable river or Stream is the land lying between the ordinary low and the ordinary high stage of the water. Nevertheless, when there is a levee in proximity to the water, established according to law, the levee shall form the bank. *C.C. Art. 456*

a) By adoption of Article 455, now at 456, of the Civil Code of 1870, the legislature granted the banks of navigable streams to adjacent owners, defining State ownership of the bottoms of navigable streams and the land that is covered by the water in its ordinary low stage.

b) As to navigable rivers and streams, the State still hold in its sovereign capacity all the land below the ordinary low-water mark, but the banks (the areas between the ordinary low-water and ordinary high-water marks) now belong to the riparian landowners. *State v. Placid Oil Co., 300 So. 2d at 173.*

4) Privately owned land did not become subject to public use when navigable body of water overflowed its normal bed and temporarily covered the adjacent, privately owned land in question. *Edmiston v. Wood, So. 2d 673 (1990)*

b. **Non-navigable Rivers or Streams**

1) In the absence of title or prescription, the beds of non-navigable rivers or streams belong to the riparian owners along a line drawn in the middle of the bed. *C.C. Art. 506*

2) Instances where the Middle of the Bed is not the Boundary

a) Bed and bottom of nonnavigable river or stream is private thing belonging either to riparian owners or to the state, depending upon whether it was originally nonnavigable or navigable; on the other hand, water which traverses that private bed is a public thing which the riparian owner may not interfere with, nor may he prevent its use by general public. *Chaney v. State Mineral Bd/. Sup 1983, 444 So. 2d 105.*

b) Where river formerly flowed around point and suddenly changed course and cut a new channel, (the person(s) loosing land to the new bed) was entitled to the bed of the old river to the ordinary low watermark; to the alluvion since

formed by accretion to that bed; as well as the land between the old channel and the new channel because it was alluvion. *Dickson v. Sandefur, 250 So.2d 708, 259 La. 473.*

c. **Alluvion and dereliction**

1) Accretion formed successively and imperceptible on the bank of a river or stream, whether navigable or not, is called alluvion. The alluvion belongs to the owner of the bank, who is bound to leave public that portion of the bank which is required for public use. The same rule applies to dereliction formed by water receding imperceptibly from a bank of a river or stream. The owner of the land situated at the edge of the bank left dry owns the dereliction. *C.C Art. 499*

a) Where Army Engineers, as an aid to flood control, put in a small high water pilot channel, which eventually became the main river channel, the fact that this act of mankind had something to do with change in old river channel did not prevent accretions to adjoining land along the old river channel from becoming the property of the riparian owners. *LSA-C.C. Art. 509. Esso Standard Oil v. Jones, 98 So.2d 236, 233 La. 915,* followed in *98 So.2d 250, 233 La. 954.*

2) Alluvion is not always owned by the riparian owner

a) Ownership of alluvion is not a vested right under Louisiana law, but rather, a legislative donation which may be altered or controlled by the legislature. *Cities Service Oil and Gas v. State, 574 So.2d 455 (La. App. 2d Cir. 1991)* Also *Jones v. Hogue, 129 So. 2d 194, 1960.*

b) Where river formerly flowed around point and suddenly changed course and cut a new channel, (the person(s) loosing land to the new bed) was entitled to the bed of the old river to the ordinary low watermark; to the alluvion since formed by accretion to that bed; as well as the land between the old channel and the new channel because it was alluvion. *Dickson v. Sandefur, 250 So.2d 708, 259 La. 473.*

c) Alluvion which forms along shore of body of water that is not river or stream belongs to State. *Davis Oil Co. v. Citrus Land Co., Sup. 1991 576 So 2d 495.*

3) Partition or Division of Alluvion

Alluvion formed in front of the property of several owners is divided equitably, taking into account the extent of the front of each property prior to the formation of the alluvion in issue. Each owner is entitled to a fair proportion of the area of the alluvion and a fair proportion of the new frontage on the river, depending on the relative values of the frontage and the acreage. *C.C. Art 501*

a) 'In considering the proper mode of division between adjoining riparian or littoral proprietors of additions to their lands by accretion or reliction, it should be observed that on account of the many varying conditions, It is practically impossible to formulate a general rule by which all of the cases may be governed. It undoubtedly is true that accretions formed in front of

and contiguous to the land of several owners belong to them all, and cannot be claimed by one with whose land the first point of contact was made. The inevitable consequence of a contrary rule would be that if it could be shown that the point of contact was first made to lands of one of the riparian owners, he would be entitled thereby to the whole accretion subsequently made to the lands of other riparian owners on either side of him and thus would cut off their water boundaries and privileges.

According to many authorities, such additions should be divided equitably among the riparian proprietors. The two principal objects to be kept in view in making such an apportionment are: (1) that the parties shall have an equal share, in proportion to their lands, of the areas of the newly formed land, regarding it as land useful for the purposes of cultivation or otherwise, in which the value will be in proportion to the quantity; and (2) to secure to each an access to the water and an equal share of the water line in proportion to his share on the original line of the water, regarding such water line in many situations as principally useful for forming landing places, docks, quays, and other accommodations with a view to the benefits of navigation, and as such constituting an important ingredient in the value of the land.' A rule or mode approved in many cases, unless it results in such inequalities as to make it inequitable, is to give the several riparian proprietors a frontage on the new shore, proportional to their frontage on the old one, connecting the respective points by straight lines. *Jones v. Hoque, 129 So.2d 194*

d. **Islands**

1) Islands, and sandbars that are not attached to a bank, formed in the beds of navigable rivers or streams, belong to the state *C.C. Art. 505*

e. **Sudden Action of Waters**

1) **Pieces of land**

If a sudden action of waters of a river or stream carries away an identifiable piece of ground and unites it with other lands on the same or on the opposite bank, the ownership of the piece of ground so carried away is not lost. The owner may claim it within a year, or even later, if the owner of the bank which it is united has not taken possession. *C.C. Art. 502*

2) **Islands formed**

When a river or stream, whether navigable or not, opens a new channel and surrounds riparian land making it an island, the ownership of that land is not affected. *C.C. Art. 503*

3) **Abandoned beds**

When a navigable river or stream abandons its bed and opens a new one, the owners of the land on which the new bed is located shall take by way of indemnification the abandoned bed, each in proportion to the quantity of the land

he lost. If the river returns to the old bed, each shall take his former bed. *C.C. Art. 504*

a) The abandoned bed of a navigable river that changes its bed or course may remain, in fact, a natural navigable water body, as the State contends. If, however, the change in the river bed occurs after 1812, the abandoned bed, even though an oxbow lake that is navigable in fact, as a matter of policy or law for more than 175 years under the specific provisions of Art. 504, loses its identity as a public thing and becomes privately owned. The specific provisions of *Art 504* control the general declaration of *Art. 450* in such circumstances. *State v. Bourdon, et al 535 So. 2d 1091, 1988.*

   (1) But note: (public interest) favors retention of ownership of the bed (of navigable waters) in the State to assure free use of the waters for navigation and transportation . . . *Vermilion Bay Land Co. v. Phillips Petroleum Co. 646 So.2d 408 La.App. 4 Cir., 1994.*

   (2) Bed and bottom of nonnavigable river or stream is private thing belonging either to riparian owners or to the state, depending upon whether it was originally nonnavigable or navigable; on the other hand, water which traverses that private bed is a public thing which the riparian owner may not interfere with, nor may he prevent its use by general public. *Chaney v. State Mineral Bd/. Sup 1983, 444 So. 2d 105.*

b) Where river formerly flowed around point and suddenly changed course and cut a new channel through the land of the person filing the petitory action, such person took title to the old bed of the river as indemnification for the loss of land to which he proved title. He was also entitled to the bed of the old river to the ordinary low watermark; to the alluvion since formed by accretion to that bed; as well as the land between the old channel and the new channel because it was alluvion. *Dickson v. Sandefur, 250 So.2d 708, 259 La. 473.*

   (1) But see: In a consursus proceedings to determine the right to oil royalties on oil taken from wells located on land which was formerly part of bed of Mississippi River but which was presently on land above the mean low water mark of the river, the main course of which had changed following cutting of a control channel by Army Engineers, the evidence sustained the finding that the land on which the wells were located had built up by successive and imperceptible accretion and that the riparian owners and not the state were entitled to royalties. *Esso Oil Co. v. Jones, 98 So.2d 236, 233 La. 915,* followed in *98 So. 2d 250, 233 La. 954.*

c) But see: The Legislature shall neither alienate nor authorize the alienation of the bed of a navigable water body, except for purposes of reclamation by the riparian owner to recover land lost through erosion… . (*Article IX, Section 3 of the Constitution of La. 1974).*

8. **Seas, Lakes and Bays**

a. **Seas**

1) The territorial sea is a public thing. *C.C. Art 450*

a) The compilers of the Code closely followed the precepts of Justinian: In quite an early case the supreme court said: 'It has frequently been adjudicated in the English and common-law courts, since the restraining statutes of Richard II and Henry IV were passed, that high seas mean that portion of the sea which washes the open coast.' *Waring v. Clarke,* 5 How. 453.

b. **Seashore**

1) Seashore is the space of land over which the waters of the sea spread in the highest tide during the winter season. *C.C. Art. 451*

a) **Historical Development of Seashore in Louisiana**

(1) Justinian declares that 'things common to mankind by the law of nature, are the air, running water, the sea, and consequently the shores of the sea.' Lob. 11, Tib, 1, par. 1. 'All that tract of land over which the greatest water-flood extends itself, is the sea-shore.' Id. Par. 111. 'The use of the sea-shore, as well as of the sea, is also public by the law of nations; and therefore any person may erect a cottage upon it, to which he may resort to dry his nets, and haul them from the water; for the shores are not understood to be property in any man, but are compared to the sea itself, and to the sand, or ground which is under the sea.' Id. par.v.

(a) There is a disagreement between counsel as to the closer applicability of the French or Roman law to this controversy. Defendants' counsel insists that, as our articles of the Civil Code are taken direct from the Roman, the French law and jurisprudence are without application; that, as the compilers of, and the commentators on, the Roman law and jurisprudence had in view the Mediterranean sea, while those on the French law and jurisprudence had in view the Atlantic ocean, the former should prevail in case of a textual difference—the Gulf of Mexico being the American Mediterranean. *Morgan v. Negodich 3 So. 636, La. 1*

[1] Domat defines 'things common to all' to be 'the heaven, the stars, the light, the air, the sea.' 1 Dom. Civil Law, § 1, art. 1, par. 115. We find in the text no mention of the sea-shore.

(2) Our own Code says, 'things which are common are air, running water, the sea, and its shores.' Rev. Civil Code, former art. 450. It also says that the 'sea-shore is that space of land over which the waters of the sea spread, in the highest water, during the winter season.' Id. former art. 451. 'From the public use of the seashores, it follows that every one has a right to build cabins thereon for shelter, and likewise to land there, either

to fish or shelter himself from the storm, to moor boats, to dry nets,' etc. Id. former art. 452.

(3) This view is sustained by all the authorities. The civil law is very plain. It results, says Laurent (volume 6, § 6), that there can be no question of the shores of the ocean when the land claimed as such does not border on the ocean. 'Lemitrophe de la mer' are the words of the learned commentator. We have found the same view expressed in Baudry, verbo 'Des Biens,' §175. The same is also the view expressed by Dalloz, vol, 38, p.208, § 106. *Burns v. Crescent Gun & Rod Club 41 So. 249 La. 1906*

b) **Immediate Vicinity of the Open Coast**

(1) All agree that the shores include only the lands along the sea or the ocean, and do not extend back from the one or the other. Bayou Castiglione under the law cannot be considered a part of the shore, for the shore is that space of land on the borders of the sea which is at times covered by the rising, and at other times is left dry by the falling, tide. *Burns v. Crescent Gun & Rod Club 41 So. 249 La. 1906*

(a) Whether we take the criterion established by our Code, or that by Justinian, and apply to either the evidence in this case, we must conclude that Bayou Cook is not an arm of the Gulf of Mexico, and that its banks form no part of the sea shore. The salt water ascertained to be in Bayou Cook, is not supplied by a 'water-flood' from the gulf; nor do 'the waters of the sea (gulf) spread, in the highest water, during the winter season,' over its banks. Bayou Cook appears to form a connecting link between Bay Bastian, an arm of the Gulf of Mexico, and Bay Adam. The latter is situated a mile or more from Bay Bastian, in the interior and in close proximity to the Mississippi river, a few miles above the point of its confluence with the gulf. Bayou Cook is of about one mile in length, two acres in width, and twenty feet in depth, in the main channel. Some water passes into it from the Mississippi river, through small bayous, and an adjacent swamp; and some salt water comes into it by way of Basin Bastian, from the gulf. This commixture of fresh and salt water is decidedly brackish. *Morgan v. Negodich 3 So. 636 La. 1887.*

[1.] If the salt water ascertained to be in a bayou, lake, cove, or inlet adjacent to, or connected with, an arm of the Gulf of Mexico, does not result from an overflow that is occasioned by high tides flooding its banks, but, in the first instance, enters an arm of the gulf, and thence passes into said bayou, lake, etc., and is there combined with fresh water derived from other sources, same cannot be considered as an arm of the sea, nor its banks the seashore.

[2.] The waters of the Gulf of Mexico, or the bays or coves behind plaintiff's land, do not 'spread' upon it, during the ordinary high

tides, or in the highwater seasons. The tide waters back up into the coves behind the land, and cause the bayous in the land to rise and spread over most of the area. These expressions in the Code 'the sea and its shores,' and 'seashore,' have reference to the gulf coast, and to the lakes, bays and sounds along the coast. The nearest body of water that could reasonably be characterized as a part of the sea, or as having a seashore, in this case, is a small bay nearly a mile away from plaintiff's land.

(2) All that tract of land over which the greatest water flood extends itself is the seashore. "High seas" mean that portion of the sea which washes the open coast, and do not include the combined salt and fresh waters which, at high tide, flood the banks of an adjacent bay, bayou, or lake'—citing Waring et al. v. Clarke, 5 How. 453, 12 L. Ed. 226 *Buras v. Salinovich 97 So. 748 La. 1923*

(a) The land should not be classed as 'seashore,' or public property. The fact that it is subject to tidal overflow does not characterize the land as 'seashore,' under the provisions of the Code. The statutes providing for disposing of such lands, either by the state or by the federal government, describe them as being subject to tidal overflow. It has never heretofore been supposed that the definition in article 451 of the Civil Code was intended to include in the term 'that space of land over which the waters of the sea spread in the highest water during the winter season,' any and all land that is subject to tidal overflow, however remote from the 'seashore,' as it is generally understood. *Buras v. Salovich 97 So. 748 La. 1923*

c. **Tidelands**

1) *Phillips Petroleum Co. v. Mississippi 108 S. Ct. 791 (1988)* states, upon entering the Union, were given ownership over all lands beneath waters subject to the tide's influence… that the lands… became property of the state upon its admission to the union." These tidelands were acquired subject to the "Public Trust Doctrine" under the "Equal Footing Doctrine". However, "It has been long-established that the individual states have the authority to define the limits of the lands held in public trust and to recognize private rights in such ands as they see fit."

a) …the legislature hereby finds that as to lands not covered by navigable waters including the sea and its shore, which are subject to being covered by water from the influence of the tide and which have been alienated under laws existing at the time of such alienation the Phillips decision neither reinvests the state, or a political subdivision thereof, with any ownership of such lands nor does the state, or a political subdivision thereof, acquire any new ownership of such property. *L.R.S. 9:1115.1 B (1992)*

b) Under Louisiana law, tidelands acquired by Louisiana through the equal footing doctrine that are not seashore or sea bottoms may be privately owned; thus, inland nonnavigable water bodies and swampland subject to indirect freshwater tidal overflow, but not direct coastal ebb and flow, may be privately owned. *Dardar v. Lafourche Realty Co., Inc. C.A.5 (La.) 1993, 985 f 2d 824*

d. **Lakes**

1) Waterbottoms of both salt-water tidal lakes or fresh water inland navigable lakes are owned by the state to the mean high-water mark. *Miami Corporation v. State, 173 So. 315 (1937)*

a) As to lakes, however, the State still holds the land all the way up to the ordinary high-water mark. *State v. Placid Oil Co., 300 So. 2d at 173(19 ).*

e. **Bays**

1) Finding that bay was arm of the sea, for purpose of determining title to alluvion deposited therein, was sufficiently supported by evidence that bay was part of larger bay, the mouth of which opened directly into the Gulf of Mexico. *Davis Oil Co. v. Citrus Land Co., 576 So 2d 495 (1991)*

f. **Arm of the Sea**

1) La.R.S. 38:2356(M)(2):

The area described in Section 2356(M)(1) [Atchafalaya Bay] is hereby permanently declared to be an arm of the sea and the laws of accretion and dereliction as defined in Civil Code Article 499 shall not apply; provided, however, as to other areas nothing herein shall be construed to affect the law of accretion and dereliction as defined in Civil Code Article 499.

a) Absent a specific declaration from the legislature, i.e. pre-1974, it is for the courts of this state to determine what is and is not an arm of the sea. DAVIS OIL COMPANY v. The CITRUS LAND COMPANY, et al. 563 So.2d 401 May 30, 1990.

2) Lake Pontchartrain has been classed as an arm of the sea. [238 La. 425]

3) Some canals entering Lake Pontchartrain have been classed as an arm of the sea.

a) The waters of the lake are affected by the tides, and, in the canal, the tides ebb and flow regularly, although to a lesser degree . The canal may, therefore, be properly classified as an arm of the sea, as is the lake to which it is attached.' (D'Albora v. Garcia, 144 So.2d at 914.)

f. **Alluvion**

There is no right to alluvion or dereliction on the shore of the sea or of lakes. *C.C. Art. 500*

1) Littoral owner in Louisiana loses to erosion and cannot gain from alluvion or dereliction.

a) "[T]he riparian rights of an owner of land bordering upon a lake do not entitle him to become the owner of the bed of the lake by effect of its becoming dry, either in whole or in part, if the State owns the bed of the lake while it is covered with water. That is true with regard to both navigable lakes and non-navigable lakes." *State v. Aucoin, 20 So. 2d 136 (1914)*

b) The temporary uncovering of parts of the bed of a lake by the recurring annual ebb of the waters, to become covered again by their rise and flow at the appropriate season, does not constitute dereliction. *Sapp v. Frazier, 26 So. 378, 51 La.Ann. 1718, 72 Am.St.Rep.493*

2) Littoral and riparian owners have constitutional right to reclaim eroded shore.

a) Section 3. The legislature shall neither alienate nor authorize the alienation of the bed of a navigable water body, except for purposes of reclamation by the riparian owner to recover land lost through erosion. This Section shall not prevent the leasing of state lands or water bottoms for mineral or other purposes. Except as provided in the Section, the bed of a navigable water body may be reclaimed only for public use.

3) Alluvion at the mouth of a navigable river.

a) Where a riverbank intersects the seashore, the seashore, as a public thing insusceptible of private ownership, must prevail and the riverbank must yield to the seashore.

(1) At some point the bank of Shell Island Pass ceased to be a riverbank and became what, at one time, was the shoreline of Little Bay. Not until this point is determined as precisely as scientifically possible can the ownership of the alluvion be determined.

(2) Remand to determine location where right descending bank of river intersected with former shoreline of bay, for purpose of determining whether alluvion which extended the right bank of the river had formed along the former shoreline, along the right descending bank of the river, or on both. *Davis Oil Company v. the Citrus Land Company, et al-supra*

4) Oceanfront Lands Owned or Patented by the United States

a) United States, not California, had title to oceanfront land created through accretion, resulting from construction of jetty, to land owned by United States on coast of California. California v. United States 458 U.S. 11331 (1982)

b) We reaffirm today that federal law determines the boundary of oceanfront lands owned or patented by the United States. Applying the federal rule that accretions of whatever cause belong to the upland owner, we find the title to the disputed parcel rests with the United States. *California, ex. Rel. State Lands Com'n v. U.S., 102 S.Ct. 2432 (1982)*

c) In Hardin v. Jordan the issue was whether a riparian owner's title stopped at the water's edge or went to the middle of a lake. Plaintiff claimed through a patent from the Federal Government. In considering the extent of land conveyed by the patent to plaintiff's ancestor in title, the Court noted:

'With regard to grants of the government for lands bordering on tide-water, it has been distinctly settled that they only extend to high-water mark, and that the title to the shore and lands under water in front of lands so granted inures to the state within which they are situated, if a state has been organized and established there. Such title to the shore and lands under water is regarded as incidental to the sovereignty of the state,--a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishery,--and cannot be retained or granted out to individuals by the United States. * * * (*Hardin v. Jordan, 140 U.S. 371, 381, 382, 11 S.Ct. 808, 811, 812*)

9. **Distinguishing Lakes and Bays from Streams**

a. The test to distinguish rivers and lakes must be based on a consideration of several pertinent characteristics including

size, especially width as compared to streams that enter it;

depth;

banks;

channels;

current, especially as compared to that of streams that enter it; and

historical designation in official documents, especially official maps. *State v. Placid Oil Co., 300 So 2d 154 (1973)*

1) As to lakes (and streams)…;

the existence of accretion-forming current is not by itself decisive of stream classification;

and Grand Lake or Six Mile Lake, being a wide, irregularly shaped body of water

of great size,

relatively shallow in depth,

with a current substantially slower than that of the inflowing river, and which

historically has always been designated as a lake, was a lake in 1812 when Louisiana was admitted to the Union.

Thus it must now be classified as such, so that the State owns its banks and the accretion rule of the Code is inapplicable. *State v. Placid Oil Co.*, supra

2) In comparing the characteristics and hydrology of the bodies of water in these old bendways, he found many distinct differences from other bodies of water characterized as "lakes." In particular, Mr. Hammack noted that:

> the source of the water supply in the cut-offs came from the Mississippi River during months of high water when the river flowed over the banks near the ends of the cut-offs, as opposed to drainage which is the source of water supply to a lake;
>
> the water in the cut-offs fluctuated in elevation with the fluctuation in elevation of the Mississippi River, and that such fluctuations were significantly greater than the elevation changes found in lakes;
>
> current flowing in the waters of the bendways as a result of the difference in elevation between the ends of the cut-off, while currents do not normally exist in lakes;
>
> the bendways have banks and a channel typical of a navigable waterway, which is not found in lakes. *Nevels v. State 665 So.2d 26 La.App. 1 Cir., (1995).*

3) "[T]he characterization of the body of water as it existed in 1812 as navigable or non-navigable, lake or stream, determines the ownership of land masses which formerly constituted its bed." *McCormick Oil & Gas Corp. v. Dow Chemical, 489 So.2d 1047, (1986)*

   a) Remand to determine location where right descending bank of river intersected with former shoreline of bay, for purpose of determining whether alluvion which extended right bank of river had formed along former shoreline, along right descending bank of river, or on both. *Davis Oil Company v. the Citrus Land Company, et al-supra*

4) Oxbows or old bend ways

   a) Old bend way of Mississippi River was a stream, rather than a lake, and therefore any alluvion or dereliction belonged to riparian owners and that portion of bank which was required for public use was reserved to the public; bend way had been part of navigable waters of United States and regularly used by commercial traffic until it was cut off from river, and communication with river was still maintained during periods of high water. *Nevels v. State, 665 So.2d 26 La.App. 1 Cir., 1995*

   a) The affidavit of Mr. R.L. Hammack, a professional land surveyor, was attached to the motion for summary judgment. Mr. Hammack's affidavit indicated he was personally familiar with the formation of several cut-offs of the Mississippi River and had conducted and supervised land surveys of riparian boundaries on those cut-offs, including the Glasscock Cut-off, which created Deer Park Lake, and the Yucatan Cut-off, which created Yucatan Lake. In comparing the characteristics and hydrology of the bodies of water in these old bend ways, he found many distinct differences from other bodies of water characterized as "lakes." In particular, Mr. Hammack noted that the

source of the water supply in the cut-offs came from the Mississippi River during months of high water when the river flowed over the banks near the ends of the cut-offs, as opposed to drainage which is the source of water supply to a lake. Another distinction found by Mr. Hammack was that the water in the cut-offs fluctuated in elevation with the fluctuation in elevation of the Mississippi River, and that such fluctuations were significantly greater than the elevation changes found in lakes. Mr. Hammack also found a current flowing in the waters of the bend ways as a result of the difference in elevation between the ends of the cut-off, while currents do not normally exist in lakes. Additionally, Mr. Hammack noted that the bend ways have banks and a channel typical of a navigable waterway, which is not found in lakes. Based on his personal knowledge of the characteristics of Deer Park Lake and the facts of the *Esso* case, and the virtually identical nature of Yucatan Lake in the present case, Mr. Hammack deduced that Yucatan Lake was a stream by legal definition, rather than a lake, and was subject to the formation of alluvion through the accretion and/or dereliction process. *Nevels v. State 665 So.2d 26 La.App. 1 Cir., 1995*

10. **Man-Made Canals**

a. Private canals dug on private property remain privately owned, even though connecting to a navigable body of water, and, therefore, are not subject to use by the general public except under the following conditions:

1) Dedication of the canal to use by the public;

a) Evidence established that canal, which was 2,000 feet long, at least 60 feet in width and four to five feet deep, was used by various property owners as an avenue to the lake, was navigable in fact and in law. *D'Albora v. Garcia, 144 So.2d 911. (1962)*

b) Although the canal which the defendant desired to fill was an artificial body of water, it was a "navigable waterway", for the canal had been put to various navigational uses for several years, including renting of dock space by defendant for crew boats. Discon v. Saray, Inc., 255 So. 2d 489, write issued 257 So. 2d 148, 260 La. 681, reversed 265 So. 2d 765, 262 La. 997 (1971)

2) The use of public funds to construct (and possibly maintain) the canal;

a) Fact that canal was built with public funds on land over which United States had servitude did not make canal public so as to grant public unrestricted right to use canal, where property owners granted Army Corps of Engineers right to build canal on their property but did not convey any rights to public to use canal for recreation or commercial purposes. Amigo Enterprises, Inc. v. Gonzales, 581 So 2d 1082 (1991)

b) A canal used for drainage purposes does not thereby subject it to general navigational use by the public where the drainage servitude was created by agreement of the landowner, as in the case of Department of Public Works permit to improve drainage from False River through Rougon Canal. In this

situation, a landowner may retain fishing, navigation and recreational right over the canal through their property. Brown v. Rougon, 455 So. 2d 1052 (1st Cir. 1990).

(1) Compare to natural nonnavigable river or stream

Bed and bottom of nonnavigable river or stream is private thing belonging either to riparian owners or to state, depending upon whether it was originally nonnavigable or navigable; on other hand, water which traverses that private bed is public thing which riparian owner may not interfere with, nor may he prevent its use by general public. Chaney v. State Mineral Bd., Su 1983, 444 So. 2d 105.

3) The destruction or loss of former navigable bodies of water due to the construction of the private canal.

a) The destruction or diversion of a pre-existing natural navigable waterway by the construction of a private canal may subject the canal to public use and make it a part of the "navigable waters of the United States". Vaughn v. Vermilion Corp., 100 S. Ct. 399 (1979); Louisiana A.G. Opinion 81-873 (Kent).

b. Canals built on public lands with public funds are public things.

11. **The Freeze Statue**

In all cases where a change occurs in the ownership of land or water bottoms as a result of the action of a navigable stream, bay or lake in the change of its course or bed, or as a result of accretion, dereliction, or other condition resulting from the action of a navigable stream, bay or lake, the new owner of such lands or water bottoms, including the state of Louisiana, shall take the same subject to and encumbered with any oil, gas and/or mineral lease covering and affecting such lands or water bottoms, and subject to the mineral and royalty rights of the lessors in such lease, their heirs, successors and assigns, the right of the lessee or owners of such lease and the right of the mineral and royalty owners thereunder to be in no manner abrogated or affected by such change in ownership. *L.R.S. 9:1151 (1952)*

a. The claim of the Clements Group that the Freeze Statute creates an implied, imprescriptible reservation of minerals was found to be without merit based on the clear wording of the statute. The wording of the statute shows its applicability when there is a change of ownership caused by the action of a navigable stream and there is a mineral lease in effect at the time of the change of ownership. There is no requirement that there be actual mineral production at the time of the ownership change. *Cities Service Oil and Gas v. State 574 So. 2d 455 (La. App. 2d Cir. 1991)*

## C. Navigability

1. **Two-fold test on navigability**

a. Navigable in Fact – Is the body of water navigable at the present time?

b. Navigable in Law – Was the body of water navigable in 1812?

2. **Navigable in Fact**

a. Rivers are "navigable" in fact when they are used, or are susceptible of being used, in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water. *Modole v. Johnson 241 F. Supp. 379. (1965)*

1) **Susceptible of Being Used . . . as Highways for Commerce**

a) A body of water is considered "navigable" when it, by its depth, width and location, is rendered available for commerce, whether it is actually so used or not. *State v. Aucoin, 20 So. 2d 136 (19 )*

2) **Ordinary Conditions**

a) A stream, to be navigable, must be usable for commerce in its natural state or ordinary condition. *State ex rel. Guste v. Two O' Clock Bayou Land Co. Inc., 365 So 2d 117 (1978),* writ denied *367 So. 2d 387.*

b) Navigability, in the sense of the law, is not destroyed because the watercourse is interrupted by occasional natural obstructions or portages; nor need the navigation be open at all seasons of the year, or at all stages of the water. *Economy Light and Power Co. v. United States, 256 U.S. 113, 41 S.Ct. 409, 65 L.Ed. 847 (1921)*

3) **Customary Modes of Trade and Travel**

a) "It would be a narrow rule to hold that in this country, unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway. The capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use. If it be capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact and becomes in law a public river or highway." *The Montello, 87 U.S. 430, 441, 442, 20 Wall. 430 [22 L.Ed. 391] (1874)*

b) "…the true test of the navigability of a stream does not depend on the mode by which commerce is, or may be, conducted, nor the difficulties attending navigation. If this were so, the public would be deprived of the use of many of the large rivers of the country over which rafts of lumber of great value are constantly taken to market. *Modole v. Johnson 241 F. Supp. 379*

b. Body of water is "navigable in law" when it is "navigable in fact." *State V. Jefferson Island Salt Mining Co., 163 So. 145, 183 La. 304, ( )* certiorari denied *56 S.Ct. 591, 297 U.S. 716, 80 L.Ed. 1009,* rehearing denied *56 S.Ct. 667, 297 U.S. 729, 80 L.Ed. 1011.*

3. **Navigable in Law – (1812)**

a. The State of Louisiana is the owner of the bed and bottom of all waterways within the State that were navigable in fact, in 1812 by virtue of the Equal Footing Doctrine – i.e. the inherent sovereignty of all states dictates that the State and its citizens own the beds and bottoms of all navigable waterways in existence on the date of statehood.

1) Navigability to fix ownership of a river bed is determined by the year of admission to statehood for states other than the original 13 states. *Ramsey River Road Property Owners Ass'n, Inc. v. Reeves 396 So 2d 873 ( ).*

2) There is no sound reason to distinguish between the inalienable character of navigable waterbeds which existed in 1812 and were acquired under the equal footing doctrine and natural navigable waterbeds which, though non-navigable at the time such bottoms were acquired by the State of Louisiana under federal grant or other means of acquisition, become naturally navigable prior to segregation by the State. The public interest which favors retention of ownership of the bed in the State to assure free use of the waters for navigation and transportation is the same in each case. *Vermilion Bay Land Co. v. Phillips Petroleum Co. 646 So.2d 408 La.App. 4 Cir., 1994.*

b. Once a waterway is found to be navigable, it remains so. *Ramsey River Road Property Owners Ass'n, Inc. v. Reeves, supra*

1) If water was used for purposes of trade and commerce in 1812 when Louisiana was admitted to Union, it is to be considered to have been navigable body of water although it may no longer serve that purpose.

a) Record sustained determination that the Bogue Falaya River at the point where the defendants proposed to build a bridge was navigable in fact at time Louisiana was admitted to the Union, and, thus, a public waterway then and today. *Ramsey River Road Property Owners Ass'n, Inc. v. Reeves, supra*

2) Construction of a dam across a bayou does not change its status as a navigable stream. *State ex rel. Guste v. Two O' Clock Bayou Land Co. Inc., supra*

c. Nor, does the fact that the bottoms or beds of navigable bodies of water are susceptible to private ownership affect the question of navigability. *California Co. v. Price, 225 La. 706 ( )*

1) For, whereas they are by their nature susceptible or capable of private ownership, their full enjoyment may be said to be somewhat impaired by reason of the superior rights of the government and the public to the unhampered use of the water above them for navigation, commerce, fishing and the like. California Co. v. Price, supra

2) Bed and bottom of nonnavigable river or stream is private thing belonging either to riparian owners or to the state, depending upon whether it was originally nonnavigable or navigable; on the other hand, water which traverses that private bed is a public thing which the riparian owner may not interfere with, nor may he

prevent its use by general public. *Chaney v. State Mineral Bd/. Sup 1983, 444 So. 2d 105.*

3) But Note: The abandoned bed of a navigable river that changes its bed or course may remain, in fact, a natural navigable water body, as the State contends. If , however, the change in the river bed occurs after 1812, the abandoned bed, even though an oxbow lake that is navigable in fact, as a matter of policy or law for more than 175 years under the specific provisions of Art. 504, loses its identity as a public thing and becomes privately owned. The specific provisions of Art. 504 control the general declaration of Art. 450 in such circumstances. *State v. Bourdon, et al (1988)*

4. **Evidence of Navigability**

a. **Navigability is not presumed**

The burden of proof rests with the party seeking to establish it. *State ex rel. Guste v. Two O' Clock Bayou Land Co., Inc., supra*

1) A stream is not to be considered as navigable unless its navigability is shown by evidence. *Burns v. Crescent Gun & Rod Club, 41 So. 249, 116 La. 103, (1906)*

2) The burden of proof of navigability, vel non, is upon the party to whose advantage it could be to establish the fact. *McClusky v. Meraux & Nunez, 186 So. 117,* reinstated *188 So. 669 (1939).*

b. **Each case must rest upon its own peculiar facts and circumstances.**

1) Determination of navigability does not necessarily involve inquiry into whether body of water is susceptible to modern means to travel, but rather, methods of transportation used in era involved in particular case being considered must be examined. *Ramsey River Road Property Owners Ass'n Inc. V. Reeves, 387 So. 2d 1194,* affirmed *396 So. 2d 873.*

2) Lack of commercial traffic does not preclude conclusion of navigability where personal or private use by boats demonstrates the navigability of a stream for a type of commercial navigation. *D'Albora v. Garcia, 144 So. 2d 911. Also Two O' Clock Bayou.*

3) Navigation Regulations, 2.99 – 1,2.99 – 100, 33 U.S.C.A. following section 1. *Ingram v. Associated Pipeline Contractors, Inc., 241 F. Supp.4. (1965)*

c. **Watercraft**

1) **Pirogues and Skiffs**

a) Where ponds, and bayous are grassed, choked bodies of water, they are not navigable, and that occasional pirogues and skiffs have been pulled over them is insufficient to show that they are navigable waters. *Burns v. Crescent Gun & Rod Club, supra*

b) The fact that the body of water is deep enough to float a pirogue does not establish navigability under Louisiana law. *Sinclair Oil & Gas Co. v. Delacroix Corp. 285 So. 2d 845*

2) **Canoes**

a) A "navigable", waterway which the public is entitled to use as a highway is such a one as in its natural state affords a channel for useful commerce, and not such as is only sufficient to float a hunter's canoe. *Delta Duck Club v. Barrios, 65 So. 489, 135 La. 357.*

3) **Rowboats and Small Boats**

a) Evidence that the stream was used only by rowboats or small boats with detachable engines was held to show that the stream was not navigable between the lands of plaintiff and defendant and had not been considered navigable by the federal government which had permitted stationary bridges over it, that it was narrow and obstructed and had such a fall that if cleared out it could be a torrent. It was held to show that the stream was not navigable at the point, so the riparian proprietors owned the bank and bed to the thread of the stream under *Civ. Code, arts. 513-515, LSA-C.C. Amite Gravel & Sand Co. v. Roseland Gravel Co., 87 So. 718, 148 La. 704*

b) Merely because small craft could navigate some bodies of water included in sections over which the land company instituted a possessory action against the mineral board did not prove navigability, and evidence concerning navigation by small craft was admissible only on the question of possession. *St. Mary Parish Land Co. v. State Mineral Board, 167 So. 2d 509,* writ refused *168 So. 2d 821, 246 La. 908.*

4) **Steamboats**

The following testimony concerning the steamer "Aurora" helped to prove the Bogue Falaya a navigable river;

a) Size – 90 ft x 14 ft; 45 tons registered.

b) Draft – 4 feet loaded (18,000 bricks)

c) Commerce – Numerous trips down Bogue Falaya carrying bricks to New Orleans;

d) Ebb & Flow – Twice a day in the river

d. **Floated Logs**

1. There was trial testimony that in the nineteenth century lumbering operations were carried on in the vicinity and that the lumber was floated down the Bogue Falaya to Covington. *Ingram v. Police Jury of St. Tammany, 20 La. Ann. 226 (1868) Ramsey River Road Property Owners Ass'n, Inc. v. Reeves 396 So. 2 877 (1981)*

e. **Ebb and Flow**

1) Tests for navigability of waters in coastal areas included ebb and flow of tide, connection with a continuous interstate waterway, navigable capacity, and whether waters are navigable in fact. *Bayou Des Familles Development Corp. v. U.S. Corps of Engineers, 541 F. Supp. 1025.*

2) Bayous which contain fresh water and drain prairies are not navigable waters, though that at times feel the pulsations of the tide. *Burns v. Crescent Gun & Rod Club, 41 So. 249, 116 La. 1038.*

f. **Artificial Obstructions**

1) Existence of artificial obstructions which are capable of being abated by exercise of public authority does not prevent a stream from being regarded as navigable in law if, supposing them to be abated; it would be navigable in fact in its natural state. *Madole v. Johnson, 241 F. Supp. 379.*

a) Navigability is not destroyed because of interruptions by occasional obstructions. *D'Albora v. Garcia, 144 So. 2d 911.*

b) A body of water can be navigable despite its natural or man-made obstructions. *State ex rel. Guste v. Two O' Clock Bayou Land Co., Inc. 365So. 2d 1174,* writ denied *367 So. 2d 387.*

2) **Dams**

Construction of a dam across a bayou and creation of an artificial lake did not change the bayou's classification as a navigable stream. *Beavers v. Butler, 188 So. 2d 725,* writ refused *190 So. 2d 242 La. 739.*

3) **Bridges**

The fact that bridges had been built, with or without legal authority, and that there was a resulting accumulation of timber, which, to some extent, obstructed and impeded navigation did not preclude a finding that the stream was navigable. *State ex rel. Guste v. Two O' Clock Bayou Land Co., Inc. 365 So. 2d 1174,* writ denied *367 So. 2d 387.*

g. **Natural Obstructions**

1) **Trees**

a) In determining the authority and duties of parish police juries as to bridges, etc. a water course will be held to be navigable when in its natural state it can afford a channel for useful commerce; even if there exists a natural formation

of sand bars and an accumulation of timber. *Goodwill v. Police Jury of Bossier Parish, 38 La. Ann. 752 (1886)*

b) The presence of living cypress trees in the bed of a bayou at the present time and of cypress stumps of ages greatly antedating the year 1812 in the channel of the stream, coupled with the undisputed fact that cypress trees cannot begin growth under water sustained the determination in favor of plaintiff that Bayou Sale was not navigable in 1812. *LSA –R.S. 13:5061; LSA-CC Arts. 513-515. Begnaud v. Grubb & Hawkins, 25 So. 2d 606, 209 La. 826 (1946)*

## HISTORICAL TITLES

### A. U.S. ACQUISITIONS AND CONVEYANCES

1. **November 3, 1762** – Louis XV ceded the entire Province of Louisiana to the King of Spain by the Treaty of Fontainebleau.

2. **October 1, 1800** – Spain transferred the Province of Louisiana to France by treaty of St. Ildefonso, to be delivered on October 18, 1802.

3. **April 30, 1803** – The United States acquired the Province of Louisiana from France by the Treaty of Cession. The Louisiana Purchase, included 544 million acres for a purchase price of 15 million dollars or approximately 3 cents per acre.

    a. Act of March 26, 1804 – Congress divided Louisiana into the Territory of Louisiana and the Territory of Orleans, with the boundary being the 33rd degree latitude. It also provided for the recognition of land grants and claims by Indian tribes.

    b. Act of March 2, 1805, 1807 – The Territory of New Orleans was divided into 19 parishes for taxation purposes and elections. These parishes were the same as those which the Spanish church had previously established.

4. **Act of March 2, 1805** – This Act provided for three important phases to allow individuals to confirm legal possession to their lands and to allow individuals to acquire lands:

    a. Congress created the U.S. District Land office for the Eastern Division of the Territory of Orleans at New Orleans.

        1) Later Congress created the U.S. District Land Office for the Western Division of the Territory of Orleans at Opelousas.

        2) Still later, other U.S. District Land Offices for the Territory of Orleans were created at Ouachita, Natchitoches and Greensburg.

    b. Congress created a Board of Commissioners' composed of one Register and two other persons.

        1) Persons holding a French, British or Spanish grant had to appear before the Board with witnesses and affidavits to prove the legality of their land grants.

    c. The Surveyor General of the United States was directed to survey the Territory of Orleans.

        1) The Federal Surveyor appointed for the area south of the State of Tennessee was directed by the Surveyor General to survey the Territory of Orleans. He engaged deputies to perform the survey and authenticated Township Plats resulting from these surveys.

            a) The Surveyor General ordered that all approved private grants be surveyed before the surveying of any vacant public lands.

b) The Surveyor General also ordered that river lots or radiating sections along navigable waterbodies be surveyed into lots 6 to 12 arpents wide and 40 arpents deep, prior to dividing the township into square sections.

NOTE: Some Townships contained over 125 Sections.
NOTE: Many Townships in coastal and marshy or swampy areas were never surveyed or only partially surveyed.

2) The Prime Meridian and Baseline were established.

NOTE: The method of surveying used in Louisiana has been previously adopted by Congress on May 7, 1784, under the chairmanship of Thomas Jefferson – i.e. Townships measuring 6 miles x 6 miles and divided into 36 sections.

3) The Surveyor General opened an office in Donaldsonville in 1831, and after moving to Baton Rouge and back to Donaldsonville, was finally moved to New Orleans in 1865. This office was abolished in 1910 and the maps and notes were given to the State Land Office.

5. **Act of April 21, 1806** – Congress authorized the sale of public lands in the Territory of Orleans.

a. The value established in 1808 was $4.00 per acre.

6. **Act of March 3, 1811** – Congress gave "preference rights" to riparian owners on navigable streams to purchase additional property in the rear of his approved grant or claim not to exceed 40 arpents.

a. This Act also gave "pre-emption rights" to persons who had habitated and cultivated vacant lands not under claim, to be the preferred purchaser of said lands. ("Settlement & Cultivation" Grant – Similar to Homestead)

7. **President's Proclamation of 1820** – This proclamation created several Naval Reservations in Louisiana.

8. **Executive Order of March 25, 1844** – This order created several Naval Reservations along the Louisiana coast.

NOTE: The U.S. later sold many of the old naval bases to private individuals.

9. **U.S. Military Bounty Lands Act of February 11, 1847** – This Act allowed veterans of the War of 1812, any Indian Wars between 1690 and 1850, and the War with Mexico to select tile to vacant lands up to a maximum amount of 160 acres.

10. **U.S. Statutes – Vol. 11, p.18** – A sale by the U.S. to three Railroad companies, of one million acres, to encourage the building of railroads. However, the Railroad companies were required to complete the railroad by a certain date or forfeit the acreage.

a. Two railroad companies did complete the railroad.

1) New Orleans Pacific

2) New Orleans, Opelousas & Great Western (Southern Pacific)

b. The third company failed to complete the railroad and the property was reconveyed to the United States.

11. Act of May 20, 1862 – Congress allowed persons over 21 or the head of a family to homestead up to 160 acres.

## B. LOUISIANA ACQUISITIONS AND CONVEYANCES

1. **Act of April 21, 1806**, as amended February 15, 1811, authorized the setting aside of 16th Section lands in every township for public school purposes.

   a. If any Section 16 did not contain 640 acres then indemnity lands were authorized, even outside the township in question.

2. **April 30, 1812** – The Territory of Orleans became the State of Louisiana.

   a. Louisiana did not own 1 acre of land, but it did own title to the beds and bottoms of all navigable waters. (Act of Congress of February 15, 1811). This became known as the "Equal Footing Doctrine" which was based upon the inherent-sovereignty of the State.

      1) 27,785,000 acres land.

      2) 3,269,000 acres of navigable water bottoms.

3. **Seminary of Learning, Act of March 27, 1827** – Congress gave Louisiana two entire townships, containing 46,000 acres for establishment of universities. Selection and use of the two townships was determined by the legislature.

4. **Act of September 4, 1841** – Congress gave Louisiana 500,000 acres for internal improvements (canals, roads, etc.) to "encourage settlement", and to be sold for not less than $1.25 per acre.

   a. 1844 – The Louisiana Legislature created the land office for the purpose of supervising these sales.

5. **Swamp Land Grant Acts of 1849 and 1850** – Congress allowed Louisiana to select and request title to any "vacant" lands that were "swampy" in character and nature. More than 10 million acres of lands were conveyed under this Act.

   a. The State of Louisiana sold or transferred much of this land to its levee boards.

   b. The Levee Board sold the land and/or timber and use the money it received for levees, roads, and canals to encourage settlement.

6. **The State also had a Homestead Act** which was developed from various acts. Homesteading was stopped by order of the governor in 1962.

7. **The State may acquire tax** adjudicated lands and after three years, if no redemption, the State may sell said lands to the highest bidder.

8. **The State of Louisiana** made several grants to various Indian tribes.